

PROPOSED AMENDED RULE 1-700

At its December 12, 2003 meeting, the Commission tentatively approved proposed amended rule 1-700. This proposal has not been considered or approved by the Board of Governors of the State Bar of California. Tentative approval means that the proposed amended rule will not be the subject of further amendments until such time as the Chair places the rule on the Commission's agenda for consideration of transmission to the Board of Governors Committee on Regulation, Admissions and Discipline with a request that the Board Committee authorize a public comment distribution of the proposed amended rule. (Note: The issue of a rule numbering system is a topic that the Commission will consider at a future meeting.)

This document provides the following resources: (1) a clean version of proposed amended rule 1-700; (2) a comparison version of proposed amended rule 1-700 (showing changes to current rule 1-700); (3) explanatory notes; and (4) an excerpt from the Commission's December 12, 2003 meeting summary.

Proposed Amended Rule 1-700 Clean Version

(As amended in accordance with the action taken at the Commission's 12/12/03 meeting.)

Rule 1-700. Member as Candidate for Judicial Office

(A) A member who is a candidate for judicial office in California shall comply with Canon 5 of the Code of Judicial Ethics.

(B) For purposes of this rule, "candidate for judicial office" means a member seeking judicial office by election or appointment. The determination of when a member is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A member commences to become a candidate for judicial office by appointment at the time of first submission of an application or personal data questionnaire to the appointing authority. A member's duty to comply with paragraph (A) shall end when the member announces withdrawal of the member's candidacy or when the results of the election are final, whichever occurs first, or when the member advises the appointing authority of the withdrawal of the member's application.

Discussion:

[1] This rule applies to members who are candidates for election to judicial office and to members who have applied for appointment to judicial office. (See California Code of Judicial Ethics, Canon 5B.)

[2] Nothing in rule 1-700 shall be deemed to limit the applicability of any other rule or law.

Proposed Amended Rule 1-700 Comparison Version

(Underlined text is a proposed addition, strike-through text is a proposed deletion.)

Rule 1-700. Member as Candidate for Judicial Office

(A) A member who is a candidate for judicial office in California shall comply with Canon 5 of the Code of Judicial Ethics.

(B) For purposes of this rule, “candidate for judicial office” means a member seeking judicial office by election or appointment. The determination of when a member is a candidate for judicial office by election is defined in the terminology section of the California Code of Judicial Ethics. A member commences to become a candidate for judicial office by appointment at the time of first submission of an application or personal data questionnaire to the appointing authority.

A member’s duty to comply with paragraph (A) shall end when the member announces withdrawal of the member’s candidacy or when the results of the election are final, whichever occurs first, or when the member advises the appointing authority of the withdrawal of the member’s application.

Discussion:

[1] This rule applies to members who are candidates for election to judicial office and to members who have applied for appointment to judicial office. (See California Code of Judicial Ethics, Canon 5B.)

[2] Nothing in rule 1-700 shall be deemed to limit the applicability of any other rule or law.

Explanatory Notes

Title:

No amendment is recommended for the rule title. The concept of a “candidate” for “appointment,” as well as “election,” to a judicial office is reflected in Canon 5B of the California Code of Judicial Ethics. The text of the California Code of Judicial Ethics is posted on the California Courts Official Website at: <http://www.courtinfo.ca.gov/rules/appendix/appdiv2.pdf> .

Text:

1. No amendment to paragraph (A) is recommended.
2. Paragraph (B) has been revised to expand the rule to cover both candidates by election as well as candidates by appointment. Consistent with the proposed expanded scope of the rule, language has been added to clarify when compliance begins and ends in those circumstances where a member is seeking judicial office by appointment.

Discussion:

1. Paragraph [1] of the proposed Discussion emphasizes that the rule is intended to apply to two distinct categories of candidates for judicial office: members seeking judicial office by election; and members seeking judicial office by appointment.
2. Paragraph [2] of the proposed Discussion clarifies that the rule is not intended to abrogate other applicable law.

Excerpt from the Commission's December 12, 2003 Meeting Summary

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C. Consideration of Rules 1-700 (Member as Candidate for Judicial Office) and 1-710 (Member as Temporary Judge, Referee, or Court-Appointed Arbitrator)

Mr. Ruvolo presented a proposed amended rule 1-700 and background information on the reasons for the amendments. It was observed that attorney candidates seeking judicial office by appointment, as well as the public, could benefit from the regulation and guidance afforded by the applicable provisions of the Code of Judicial Ethics. The Chair invited comments on the proposed amended rule.

(1) In the application and interview process that is involved in an appointment setting, an attorney candidate should be subject to the same restrictions as candidates by election. For example, in an interview with representatives of an appointing body, a candidate should not be permitted to make commitments or promises concerning prospective disposition of specified categories of cases.

(2) Even as amended, an appointing authority still might attempt to elicit improper statements from a candidate but the candidate would, at least, have a basis in professional responsibility for refraining from responding to such inquiries.

(3) Consideration should be given to limiting the rule to an incorporation of Canon 5B and not the entire Code of Judicial Ethics.

(4) Consideration should be given to clarifying precisely how and when a candidate for election withdraws from candidacy.

Following discussion, the Commission tentatively approved proposed amended rule 1-700 with the proviso that Mr. Ruvolo would work with Mr. Mohr and staff in finalizing the draft. In particular, it was understood that the rule text or the discussion section might be modified slightly to clarify the issue of withdrawal of candidacy by an attorney seeking judicial office by appointment. The text of the tentatively approved proposed amended rule is set forth below.

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Discussion:

Nothing in rule 1-700 shall be deemed to limit the applicability of any other rule or law.

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General information about the Commission, including: its charter; meeting schedule; and a member-staff roster is available at the State Bar of California website. Go to: www.calbar.ca.gov/ethics and access the link to the "Commission for the Revision of the Rules of Professional Conduct."